Ministry of
the Attorney
General

REPORT OF THE LIAISON COMMITTEE ON ENFORCEMENT OF FAMILY LAW ORDERS

March 1983

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Committee on Enforcement of

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The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

Your Liaison Committee on the Enforcement of Family Law Orders has the honour to submit its Report.

Yours very truly,

John Takach, Q.C.

Trudy Don

James Noble

Philip Epstein, Q.C.

Craig Perkins

Maureen Hastings

Geraldine Waldman

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CHAPTER I: - INTRODUCTION

Recent years have seen sweeping changes in the area of family law in Ontario. Property rights and support obligations between spouses, rights to possession of the matrimonial home, the status of children born outside marriage, and custody and access rights have all been affected by legislative change. The content of orders made by our courts has reflected these changes, but enforcing court orders remains a problem. Another problem which has not been dealt with adequately is domestic violence, which is not purely a family law concern but a criminal matter as well.

The enforcement of court orders relating to the family and persons living in family relationships and the prevention of domestic violence are matters of great concern to the Ministry of the Attorney General. Respect for the orders of our courts and the protection and safety of all citizens are two fundamental goals of the administration of justice in Ontario.

In recognition of the concern that has been expressed in the Legislative Assembly, by the legal profession, and by the public in general about the need for more effective measures for enforcing orders and protecting persons in family relationships, the Honourable R. Roy McMurtry, Q.C., Attorney-General, established in 1980 the Liaison Committee on the Enforcement of Family Law Orders.

The Liaison Committee wishes to express its grateful appreciation to Margaret Campbell, former Member of the Provincial Parliament for St. George (Toronto), whose tireless work towards and lifelong dedication to solving the problems which are the subject of this Report were an important influence on the establishment of the Committee.

The membership of the Committee represented a group of individuals with professional interest and expertise in these areas of concern. Prominent members of the Family Law bar participated along with representatives from the police, Interval houses, the Ministry of the Attorney General and a professional law teacher with special expertise in the area. A special effort was made to ensure representation from outside Toronto.

The Committee was chaired by H. Allan Leal, Q.C., Deputy Attorney General from May, 1980 until August, 1981, when he was appointed Special Constitutional Adviser to the Premier. Other Committee members from the Attorney General's Ministry were John Takach, Q.C., Deputy Director of Criminal Law and Director of Crown Attorneys, and Craig Perkins, counsel to the Policy Development Division. Mr. Takach assumed chairmanship for the purposes of completing this Report. Allan Shipley of the Policy Development Division acted as Committee Secretary. Karen Weiler of the Policy Development Division served on the Committee until December, 1980 when she was appointed as a Judge of the County and District Courts of Ontario.

Police representation on the Committee was provided by James Noble, the Deputy Chief of Police for Administrative Operations, Metropolitan Toronto Police with assistance from Constables Wendy Leaver and Dennis Burke. Trudy Don of the Ontario Association of Transition and Interval Houses and Professor Constance Backhouse of the University of Western Ontario Faculty of Law brought their expertise to the consideration of the areas of concern through membership on the Committee. Unfortunately for the Committee, Professor Backhouse had to resign while pursuing studies outside of Canada, and therefore did not participate in approving this Report.

The Liaison Committee had as members Philip Epstein, Q.C. of Epstein & Cole, Toronto, Maureen Hastings of Guy and Associates, Sudbury, and Geraldine Waldman of Waldman & Beckman, Toronto, all barristers and solicitors in private practice, specializing in family law.

Ms. Debra Ram, student-at-law, Ministry of the Attorney General, made an invaluable contribution to the writing and editing of this Report for which the Committee is obliged.

Finally, the thanks of the Committee, and particularly the Chairman, are extended to Simon Chester, who particularly while Executive Counsel to the Deputy Attorney General provided much by way of support and legal opinion in the preparation of the report.

The Committee's scope of investigation through its fifteen meetings did not extend to considering broad social policy questions in the areas of family law orders and domestic violence. Aware that other governments and other agencies have had the matter of domestic violence under review, the Committee functioned foremost as a liaison committee to develop a better understanding and appreciation of the problems in enforcing family law orders and deterring domestic violence, with a view to identifying areas in which administrative action might be taken. Accordingly, the focus of the Committee was on procedural aspects of enforcing family law orders and the legal responses of the criminal justice system to domestic violence. This Report reflects that orientation.

All members of the Liaison Committee were invited to submit problems for discussion by the Committee. As a result the following tasks were undertaken:

- to review procedures for enforcement of family law orders, such as

  orders for exclusive possession of the matrimonial home;

  custody and access orders; and

  orders restraining harassment and molestation, and

  to consider the role and legal responsibility of both the sheriff's office and police forces in enforcing such orders.

- to consider what improvements, if any, may be required to assist the sheriffs and police forces in carrying out their responsibilities to enforce family law orders.

- to review the role of the criminal justice system and the police in cases of child abduction.

- to assess the need for a central registry of court orders and to consider the types of orders that should be kept in the registry.

- to review police training and procedure with respect to intervention in domestic disputes and to make recommendations for any improvements that may be required.

- to review the role of the criminal justice system in cases of domestic violence, with particular reference to

  the appropriate procedures for laying informations;

  the appropriate method of prosecution;

  the role of the Crown Attorney;

  the use of bonds to keep the peace and mechanisms for enforcing those bonds; and

  the scope for the use of judicial interim release (bail).

- to consider the availability of public information for the assistance of victims of domestic violence

- to review the relevant legislation in relation to the foregoing and assess the need for reform.

The recommendations of the Committee contained in this Report flow from the Committee's consideration of the above outlined areas of concern. However, the Report was not the sole outcome of the Committee's meetings and discussions.

One of the most important results of the Committee's work was the successful use of the format of consultation to approach the concerns discussed. Working in the format enabled members of the Committee to appreciate the difficulties faced by police, lawyers and social service professionals in the areas under discussion. Through exposure to different perspectives experienced in resolving the same concerns, members of the Committee gained a greater understanding of the problems and ways of finding more appropriate responses.

CHAPTER 2: PROCEDURES FOR THE ENFORCEMENT OF FAMILY LAW ORDERS

Procedures for Enforcement of Orders for Exclusive Possession of the Matrimonial Home

Subsection 39(1) of the Family Law Reform Act[1] defines the matrimonial home as property that is or has been occupied by spouses as their family residence: generally, section 40 recognizes an equal right of possession in the matrimonial home between the spouses. However, the exclusive possession provisions in s. 45 may be used to alter this position.

Under s.45 of the Family Law Reform Act a spouse can obtain an order for exclusive possession of the matrimonial home. This order is frequently sought to exclude from the home a spouse whose conduct is endangering the well-being of his or her spouse or children. For example, in the case of Janssen v. Janssen[2], an order for exclusive possession was made against a spouse whose abusive behaviour forced his wife and children to flee the home and take refuge in inadequate alternative accommodation. An exclusive possession order will be made only if it is shown to the court that other provision for shelter is not adequate in the circumstances or that it is in the best interests of a child to do so.

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1 R.S.O. 1980, c.152

2 (1979), 11 R.F.L. (2d) 274 (Co. Ct.)

As a result of the decision of the Supreme Court of Canada in the Reference re section 6 of the Family Relations Act, S.B.C. 1978,[3] it appears that exclusive possession orders should no longer be made by provincial court judges or Supreme Court masters. The Supreme Court held that exclusive possession, although not a matter of ownership, was a property matter, and, as such, was within the exclusive jurisdiction of federally appointed judges. As long as there remain separate courts dealing with family matters, spouses wishing exclusive possession orders will have to take their applications to a s.96 court judge.

Having obtained an exclusive possession order, a spouse often has trouble enforcing it against an excluded spouse who insists on returning and entering the home. Consideration should be given to amending the Family Law Reform Act to provide a specific offence section for disobeying an order of the court for exclusive possession, so as to facilitate police enforcement of exclusive possession orders.

Section 116 of the Criminal Code will now be available to assist police in the enforcement of an exclusive possession order, since the breach of such order may be the basis of a charge under s.116, (R.v. Clement[4]).

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3 [1982] 3 W.W.R.1 (S.C.C.)

4 (1981), 61 C.C.C. (2d) 449 (S.C.C.)

Procedures for Enforcing Custody and Access Orders Section 122 of the Judicature Act

When a marriage breaks down, disputes over the custody of children are often the most difficult and intractable conflicts that the courts must deal with and resolve. Unless the parties are willing to accept joint custody and to make it work the court must resolve the custody dispute by granting custody of the children to one parent, and allowing rights of access to the other parent. The parent not granted custody may feel bitter and dissatisfied with the outcome of the court battle, and may subsequently breach the order. For example, he or she may refuse to return the children to the custodial parent at the end of an access period. The custodial parent may then seek police assistance to enforce the custody order and get the children back. More serious problems arise when one parent abducts the child from the other parent and tries to escape from Ontario. The abduction may be an attempt to punish the other parent or to avoid an adverse court decision. Often the abduction will be made before the court proceedings have been completed. Although the number of abductions is not known, the traumatic effects of forcibly uprooting a child are sufficiently serious to require extraordinary intervention.

The police have been reluctant to intervene in custody disputes. They are aware that custody orders may not be final, and that they can never be certain that the order being presented to them for enforcement is the most recent one. Enforcing the order may involve breaking into a home and using force to seize the children. The police naturally require clear authority for taking such action.

The Supreme Court has in the past been reluctant to order the police directly to enforce custody orders. This reluctance is based on the view that civil process should be enforced by the sheriff, and that police officers should become involved in the enforcement of civil orders only when a breach of peace is anticipated, and police assistance is required by the sheriff.

Despite these concerns, it appears possible that, pursuant to s.122 of the Judicature Act, the Supreme Court has always had jurisdiction to make orders directing the police to assist in the enforcement of custody orders. S.122 provides:

> Sheriffs, deputy sheriffs, jailers, constables and other peace officers, shall aid, assist and obey the court and the judges thereof in the exercise of the jurisdiction conferred by the Act, and otherwise, whenever by the rules or by the order of the court or of a judge required so to do.

Until recently, s.122 had never been the subject of judicial interpretation. Consequently, there has been uncertainty as to whether police officers acting under s.122 could properly assist in the enforcement of custody, access and other civil orders. Hopes were raised by a recent case (Leponiemi) that the issue would soon be clarified. However, due to particular circumstances peculiar to that case, the question remains unresolved. The Children's Law Reform Act has facilitated the enforcement of custody orders by providing enforcement provisions in subsections 37(1) and (2). This is a welcome addition to the law, and one which will greatly enhance police enforcement powers, and make clear their duties and responsibilities, and authority to assist. The point worth noting is that subsection 37(3) permits an order to be made ex parte directing law enforcement officials to apprehend a child. The Committee recommends that the

subsection be amended to permit orders under subsection 37(1) to persons other than law enforcement officials to be made ex parte as well.

Another important matter is the lack of uniformity among civil orders, and the unfamiliarity of police with all such orders. To assist police training in enforcement of family law orders, the members of the family law bar on the Committee have undertaken to meet with the family law section of the Canadian Bar Association to develop a precedent form of order and to include appropriate instruction in the Bar Admission course materials.

Enforcement Outside Ontario

Custody and access orders made by Ontario's courts are sometimes frustrated by parents who abduct their children and take them to another jurisdiction, beyond the reach of our courts. However, many jurisdictions have recently enacted legislation whereby foreign custody and access orders can be recognized and enforced. For example, all of Canada's provinces except Quebec have enacted versions of the Extra Provincial Custody Orders Enforcement Act. In addition, the Hague Convention on the Civil Aspects of International Child Abduction, which provides an international scheme for dealing with children who are wrongfully removed or retained, will in the future become law in many countries. Both these matters are dealt with in the Children's Law Reform Act.

The enforcement of Ontario custody orders by the courts of foreign jurisdictions can be facilitated if the orders contain a condition that the child not be taken out of Ontario without the consent of the other spouse. Of course, such a condition should be imposed only in cases

where there appears to be a real danger of abduction from Ontario. In making the removal or retention of the child outside of Ontario clearly wrongful, the condition can trigger the application of the Hague Convention and other forms of extra-provincial custody enforcement legislation.

It is the duty of counsel in such cases to draw this to the attention of the court. Also, parents who defy such conditions may be more readily prosecuted under the Criminal Code provisions relating to the abduction of children[5].

The Committee therefore recommends that in a proper case judges should order that the child not be taken outside Ontario without the consent of the other spouse.

Address Information

The enforcement of custody and access orders is sometimes impeded by the disappearance of the child with a parent. Section 26 of the Family Law Reform Act and s.40 of the Children's Law Reform Act offer some assistance in locating the parent who has removed the child. They provide that where, for the purpose of the enforcement of an order for custody or access, the person in whose favour the order was made needs to learn or confirm the whereabouts of the person against whom the order was made, the court may order any person or public agency to provide from its records particulars of the address of the person who has disappeared with the child. The limitation of these provisions is that, as provincial legislation, they do not apply to federal agencies. Therefore address information contained in income tax returns and unemployment insurance claims is unavailable.

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5 R.S.C. 1970, c.C-34, s.250

For example, in the case of Glover v. Glover and Wenenn[6] children were abducted by their father out of their mother's custody. Despite the mother's extensive inquiries and requests for assistance, the father successfully concealed his and the children's whereabouts. Finally, when the mother obtained a decree nisi granting her custody of the children, the court made an order directing the Taxation branch of Revenue Canada to provide the court with particulars of the addresses of the father and the co-respondent. However, the Court of Appeal rescinded the order on the basis that the inherent jurisdiction of the Supreme Court of Ontario to control its own process and ensure that its orders are obeyed is subject to the statutory limitation contained in s.241 of the Income Tax Act[7]. Section 241 prohibits the communication of information given to the Minister of Revenue for the purposes of the Income Tax Act. This prohibition is subject to certain exceptions specified in s.241. Because the Glover case did not fall within any of these exceptions, Revenue Canada could not be compelled to disclose address information contained in an income tax return.

In the interests of facilitating the enforcement of custody and access orders, it is the Committee's recommendation that the Attorney General, Ontario should request the Minister of Justice, Canada that the Federal government be asked to provide access to records of public

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6 (1980), 18 R.F.L. (2d) 116 (C.A.), aff'd (1982), 130 D.L.R. (3d) 383 (S.C.C.)

7 R.S.C. 1970, c.I-5

agencies for the purposes of obtaining an address as is provided in the Family Law Reform Act, s.26 and the Children's Law Reform Act, s.40.

Supervised Access

Rights of access are usually awarded to the parent who does not get custody of the children. Sometimes the access order will specify precisely the terms of access, such as the days and times when access rights may be exercised. In other cases, "reasonable access" is ordered, and it is left to the parties to work out the details of the access arrangement. Frequently, the court will grant custody to one parent on condition that generous access provisions be made in favour of the other parent.

Occasionally, however, the question arises whether access should be granted on any terms at all. This can happen in two kinds of situations:

i) where there is a fear that the access parent will take advantage of an unrestricted access period to abduct the child; or

ii) where there is apprehension that the access parent may cause physical or emotional harm to the child.

The courts are most reluctant to bar access completely. It is recognized that despite the dangers of abduction or harm to the child, the maintenance of the parent-child relationship shcuild be encouraged. In this kind of case, one solution is to order supervised access. Under an order for supervised access, a third party chaperones the child during the access period and ensures that the child is safely returned to the custodial parent.

However, certain practical problems arise with respect to orders for supervised access. One problem is to find persons to provide such supervision. At present, when courts order supervised access, it is generally left to the parties to find a supervisor and arrange a setting for the supervision. Section 35 of the Children's Law Reform Act permits a court to order that access be supervised "by a person, a children's aid society or other body," but provides that such an order cannot be made "unless the person, society or body has consented to act as supervisor." This provision in section 35 thus recognizes that it would be impracticable to compel a third party to provide supervision without his consent.

Another problem may be the cost of providing access supervision. In many cases, the parties will not be able to pay someone to supervise access. At the same time, cost is a factor which may discourage public agencies (such as children's aid societies) from consenting to provide supervision. However, since supervised access is not ordered very often, the cost problem may not be prohibitive, and there may be methods of obtaining voluntary supervision that are not being used; these should be explored further.

The Committee recommends that in a proper case, supervised access should be ordered. The Committee recognizes the need for supervised access services, and notes the apparent success of the LAMP project in Toronto. The Lakeshore Area Multi Service Project provides, among its eighteen services, facilities for access pursuant to a court order for supervision. In relation to supervision, there are visiting facilities and neutral exchange spots provided. The supervised access program has been in

operation for about a year. Originally designed to serve the Etobicoke community, LAMP's access facilities are actually made available to a much wider region.

There is no doubt that facilities for supervised access are needed. The Committee recommends that consideration be given to ensuring that the LAMP project remain viable, and sources of funding remain available for such services. The Committee recommends further study in the area of supervised access services.

Procedures for Enforcement of Orders Restraining Harassment and Molestation

It is sometimes necessary to protect one spouse and the children of a family from the violent and abusive behaviour of the other spouse. The court, in order to afford such protection, may impose a restraining order pursuant to section 34 of the Family Law Reform Act. Section 34 provides that upon application the court may make an order restraining the spouse of the applicant from molesting, annoying, or harassing the applicant or children in the lawful custody of the applicant. There is a similar provision in s.36 of the Children's Law Reform Act.

In the past restraining orders have been obtained in either superior court or provincial court (family division). However a recent decision by the Supreme Court of Canada in Reference Re Family Relations Act, S.B.C. 1978[8] casts doubt on the constitutionality of restraining orders made by the provincial court judge. The judgment is confusing in its handling of the jurisdiction of provincially appointed judges to make restraining orders.

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8 [1982] 3 W.W.R.1

The Chief Justice found that two different kinds of restraining orders in the British Columbia Act were outside the jurisdiction of the provincial court. His reasons were firstly, that one restraining order under review was ancillary to exclusive possession. Since he found exclusive possession to be ultra vires the provincial court, he also found the restraining order to be ultra vires. Although he disposed of the order as being ancillary to both custody and exclusive possession, he also found that it was more akin to the kind of injunctive relief exercised in making exclusive possession orders. Such injunctive relief is a superior court power.

The other restraining order authorized by the British Columbia Act he found to be ancillary to custody. However, he was in disagreement with the majority of the court on the main custody issue; therefore, the status of this second type of restraining order was not clarified by the Supreme Court of Canada.

Since restraining orders under s.34 of the Family Law Reform Act or s.36 of the Children's Law Reform Act are not ancillary to custody, exclusive possession or anything else, the only threat to provincial court jurisdiction to make such orders is that they may be found to be injunctive in nature. The fate of such orders awaits judicial interpretation of the reasoning of the Court in the B.C. Reference. An Ontario provincial court judge has recently ruled that he did not have jurisdiction to make a restraining order under s.34. The judge's ruling has been challenged on judicial review, and so there may soon be an authoritative ruling on the Ontario legislation respecting restraining orders in provincial courts.

Prior to the B.C. Reference, this matter had been raised in the case of Re Kleinsteuber and Kleinsteuber[9]. The power of provincially appointed family court judges to make such orders was considered valid on the basis that it was an extension of the common law right of preventive justice. Kirkland, Prov. Ct. J., concluded that the preventive justice authority, which resided in provincial summary courts prior to Confederation, was not forfeited upon reservation of injunctive powers to superior courts through section 96 of the British North America Act. Accordingly, the provincial Legislature could confer on provincially appointed judges the power to enforce preventive justice through the imposition of restraining orders. As mentioned above the last judicial word on the issue of provincial court judges' power to make restraining orders has not yet been said in Ontario.

Police Intervention

Section 37 of the Family Law Reform Act and section 39 of the Children's Law Reform Act provide that a provincial court (family division) in addition to its powers in respect of contempt, may punish by fine or imprisonment any wilful contempt of or resistance to its orders under the Act. The problem is that these sections do not create an offence, and there is some question as to police powers, such as arrest, in dealing with a breach of a restraining order made by a Provincial Court (Family Division).

Section 116 of the Criminal Code appears to offer a basis for police enforcement of restraining orders. Section 116

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9 (1980), 29 O.R. (2d) 360 (Prov. Ct. Fam. Div.)

provides that, "unless some penalty or punishment or other mode of proceeding is expressly provided by law," it is an indictable offence to disobey a court order. The courts until recently have interpreted this provision to mean that where contempt proceedings are available, s.116 cannot be used.

The Supreme Court of Canada in a recent case[10] has clarified much of the confusion surrounding s.116. In that case, the Supreme Court held that disobedience of a non-molestation order made by a Manitoba superior court judge was not exempted from prosecution under s.116 by virtue of that court's inherent powers at common law to punish for contempt of its orders.

Because of this decision, the availability of s.116 is enhanced as a basis for police intervention for the purpose of enforcing restraining orders under s.34 of the Family Law Reform Act and s.36 of the Children's Law Reform Act. However, to better enable the police to enforce breaches of restraining orders specifically, s.37 of the Family Law Reform Act and s.39 of the Children's Law Reform Act ought to be amended so as to remove doubt about creation of an offence.

At the same time, in order to allow the police to deal effectively with offenders, a specific arrest power with respect to the new offence should be given to the police. Such a power must be expressly given because under the Provincial Offences Act, there is no power to arrest a person who commits a provincial offence; arrest powers must be granted under the statute that creates the offence.

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10 Regina v. Clement (1981), 61 C.C.C. (2d) 449 (S.C.C.)

Accordingly it is recommended by the Committee that an offence and arrest power be added to the Family Law Reform Act and Children's Law Reform Act for breach of restraining orders.

Masters' Powers

A Supreme Court master is a judicial officer who has jurisdiction under the Rules of Practice to hear motions on a wide range of matters. Rule 209 sets out the motions which may be brought before a master, and rule 210 lists matters excluded from the master's jurisdiction. Included in Rule 209 among motions which a master may hear are motions for interim relief under the Family Law Reform Act. However, rule 210 of the current Rules of Practice of the Supreme Court denies the master jurisdiction to dispose of applications for restraining orders under the Family Law Reform Act.

Thus, dealing with family disputes, masters are unable to respond to cases that indicate a need for a s.34 restraining order. Therefore, in order to obtain both an order for exclusive possession of the matrimonial home and a restraining order, an applicant must go before a judge.

In the past, suggestions that provincially appointed masters be empowered to make restraining orders have raised constitutional concerns that this would involve an interference with the injunctive powers of the superior courts. This concern is identical to that raised by the recent Supreme Court of Canada decision in the B.C. Reference regarding restraining orders in provincial courts. With respect to interim restraining orders, the position of the Ministry of the Attorney General is that

the B.C. Reference case is distinguishable, and that masters could be given the power to grant interim restraining orders.

The Committee considered whether the master's power to punish for contempt of his orders ought to be extended. Contempt of a master's order may now be dealt with by way of a motion to a Supreme Court judge to commit for contempt, or by using s.116 of the Criminal Code. The Committee feels that these methods are sufficient, but suggests that the Bar be made more aware of their availability.

CHAPTER 3: THE ROLE AND LEGAL RESPONSIBILITY OF THE SHERIFF'S OFFICE AND POLICE FORCES IN ENFORCING FAMILY LAW ORDERS

The role of the sheriff in enforcing family law orders is primary. The sheriff is responsible in first instance for enforcing the civil orders of the court.

There are circumstances in which the police will be involved in the enforcement of such court orders. Where there is apprehension of a breach of the peace, the sheriff may request police assistance in enforcing the order. For this assistance, an order of the court is not required to direct the police to act.

Under provisions recently enacted in the Children's Law Reform Act, police assistance can be directed. Under subsections 37(2) and (4), the court is empowered to order such assistance, and the Act imposes a duty on the police to act on that order. It is imperative that all Crown attorneys be aware of these provisions, so that they may properly advise the police.

Under section 122 of the Judicature Act, the court may order the police to assist in other circumstances, and the section imposes a duty to act. Recent case law on this section has raised some issues of jurisdiction to make such orders. However, the provisions in the Children's Law Reform Act make s.122 of the Judicature Act of limited impact in circumstances where custody or access orders are involved. The Committee recommends that any remaining confusion about the scope of s.122 should be clarified.

As a general proposition, where the sheriff can effectively enforce the court order, the police ought not to be involved. However, given such factors as the business hours of the sheriff's office, the police may sometimes be needed specifically in cases of domestic violence. For example, the police have jurisdiction under section 116 of the Criminal Code to enforce restraining orders where immediate action must be taken. In appropriate cases, the police may use their powers of arrest where there is a violation of an exclusive possession or restraining order.

It is important to note that there may be special considerations involved in a discussion of the roles of sheriff and police in enforcing family law orders. For example, there may be no sheriff in a particular community, and the police may be the only law enforcement mechanism available.

The Committee recommends that there be easier access to the sheriff's office. Longer hours and weekend availability should be considered. In addition, police should be advised that they will be called upon to enforce family law orders, and that their powers arise under the statutory provisions described above.

CHAPTER 4: THE ROLE OF THE CRIMINAL JUSTICE SYSTEM AND THE POLICE IN CASES OF CHILD ABDUCTION

In recent years the problem of child abduction has been the subject of much concern. The criminal justice system must reflect, in its handling of child abduction cases, that a parent who removes the child from the custodial parent in defiance of a court custody order or without regard to the child's best interests will be liable to serious criminal sanctions. Such strong measures will not only aid in punishing offenders, but will serve as a deterrent to parents who contemplate unlawfully removing children from the custodial parent and possibly from the jurisdiction.

Where there is a custody order and subsequent abduction, Crown attorneys should be recommending to the police that charges of abduction of a child under the age of 14 years be laid whenever the circumstances warrant that course of action. A custody order is one of the paramount factors the Crown attorney will consider when advising the police. Where there is an outstanding custody order in another jurisdiction, abduction charges may be laid in Ontario as long as the circumstances warrant the charge. Usually, however, in a case where the custody order was obtained in another province, abduction will have taken place outside Ontario.

Any complaint by a parent that his or her child has been abducted should be referred to the police for investigation. Before a charge is laid, the complainant need not have exhausted all civil remedies. The issue to be resolved by the Crown attorney concerning an abduction charge is whether the alleged criminal wrong-doing has in fact taken place.

If the police decide there are reasonable and probable grounds to lay a charge of child abduction, they should lay the charge. The police should act in the same manner in child abduction cases as they do in any other criminal matter. Placing a warrant for the arrest of the abductor on C.P.I.C. may help in apprehending the abductor. The issue as to whether a summons or warrant is the appropriate mode of proceeding depends on the circumstances. Generally speaking, a warrant will be the appropriate way of proceeding. A warrant in a child abduction case should be executed in the same manner as any other warrant involving a criminal charge. The abductor should be returned from wherever located in Canada.

If the police arrest the abductor, caution should be exercised with respect to seizing the child. A warrant for the arrest of an abducting parent does not give authority to seize the child. Counsel for the custodial parent should obtain an order under s.37 of the Children's Law Reform Act so that the police will have power to apprehend and deliver the child in Ontario. Where the children are outside the province, the appropriate extra-provincial order should also be in place. The parent from whom the child was abducted should be advised that his or her spouse is about to be arrested and appropriate arrangements regarding the child's safety and well-being should be made by that parent. The police should render whatever assistance possible.

The present state of the law has caused some concern to law enforcement officials. Recently passed amendments to the Criminal Code, which came into effect on January 4, 1983, make it an offence for a parent to abduct his or

her child even though there is no outstanding custody order. The amendment provides for a defence that the abduction was necessary to protect the child from danger of imminent harm. The consent of the Attorney General is a prerequsite to instituting proceedings against the abductor where there is no custody order.

The Criminal Code amendments, contain, inter alia, the following provisions:

> 250. Every one who, not being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, unlawfully takes, entices away, conceals, detains, receives or harbours that person with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that person of the possession of that person is guilty of an indictable offence and is liable to imprisonment for ten years.
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> 250.1 Every one who being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person in contravention of the custody provisions of a custody order in relation to that person made by a court anywhere in Canada with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that person of the possession of that person is guilty of

(a) an indictable offence and is liable to imprisonment for ten years; or

(b) an offence punishable on summary conviction.

250.2 (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, in relation to whom no custody order has been made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person of the possession of that person, is guilty of

(a) an indictable offence and is liable to imprisonment for ten years; or

(b) an offence punishable on summary conviction.

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General or counsel instructed by him for that purpose.

250.3 No one shall be found guilty of an offence under sections 250 to 250.2 if he establishes that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was done with the consent of the parent, guardian or other person having the lawful possession, care or charge of that young person.

> 250.4 No one shall be found guilty of an offence under sections 249 to 250.2 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm.
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> 250.5 In proceedings in respect of an offence under sections 249 to 250.2, it is not a defence to any charge that a young person consented to or suggested any conduct of the accused.

The provisions of section 249 extend to children under sixteen and to abductors who are not parents or guardians.

Strong enforcement of the criminal law sanctions against child abduction is required on the part of the Attorney General's agents and the police. Parental child abduction must be treated as any other serious crime if it is to be effectively controlled.

The recently enacted additions to the Children's Law Reform Act represent a major reform of child custody law in Ontario, and include a number of provisions to deter child abduction.

Section 38 of the Act allows the court to order in appropriate cases that a person surrender his passport when there is a risk that he may abduct the child while exercising his custody or access rights. The relevant provisions of section 38 are as follows:

> 38.(1) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person prohibited by court order or

separation agreement from removing a child from Ontario proposes to remove the child from Ontario, the court in order to prevent the removal of the child from Ontario may make an order under subsection (3).

(2) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person entitled to access to a child proposes to remove the child from Ontario and is not likely to return the child to Ontario, the court in order to secure the prompt, safe return of the child to Ontario may make an order under subsection (3).

(3) An order mentioned in subsection (1) or (2) may require a person to do any one or more of the following: . . .

> 4. Deliver the person's passport, the child's passport and any other travel documents of either of them that the court may specify to the court or to an individual or body specified by the court. . . .

(6) A court or an individual or body specified by the court in an order under paragraph 4 of subsection (3) shall hold a passport or travel document delivered in accordance with the order in safekeeping in accordance with any directions set out in the order.

(7) In an order under subsection (3), a court may give such directions in respect of the safekeeping of the property, payments, passports or travel documents as the court considers appropriate.

To prevent the issuance of duplicate passports, the Passport Office maintains a computer file of the names of individuals whose passport applications require particular attention. This file includes the names of those subject to custody or access decisions (parents, guardians, children) which have been sent to the Passport Office by the courts, legal agents and concerned parents. All new passport applications are checked against this list and if matches result, the application is suspended and the passport withheld until appropriate clearance has been established. This is an effective instrument to prevent duplicate passports being issued.

The major limitation of the above procedure is that applications submitted fraudulently cannot be detected. Instead, provisions of the Criminal Code (s. 58) must be relied upon to deter and control the latter.

The Passport Office system depends on timely advice of a potential problem and the names and birth-dates of the individuals involved must be provided to the Passport Office. It may be prudent to notify the Passport Office before a custody or access matter comes before a Court. Apparently many lawyers do not notify the Passport Office when the Court orders a passport holder to surrender his passport. As a result it is possible to obtain a new passport. Accordingly, it was proposed that:

> (a) representations be made to the Passport Office requesting that consideration be given to the steps that may be taken to prevent persons subject to a court order from obtaining new passports; and

(b) appropriate steps be taken to enlist the cooperation of foreign embassies and consulates in refusing to issue new passports to persons subject to a court order.

The objective of most parents who have had their child abducted by the other parent is simply to have the child returned and then to terminate subsequent criminal proceedings if such should result. Notwithstanding this, even if the complainant does not wish to proceed with the charge against the abducting spouse, the Crown attorney should proceed with the charge in any event if that course of action is warranted in the best interest of the administration of justice. Only in exceptional circumstances should the Crown attorney conclude that the charge should not proceed.

CHAPTER 5: A CENTRAL REGISTRY OF COURT ORDERS

Some of the problems relating to police involvement in the enforcement of court orders in the family law area have already been discussed in Chapter 3, when the roles and responsibilities of the sheriff and the police were reviewed. The Leponiemi case raises serious questions about the scope of police officers' duties when faced with an order from a civil court requiring their assistance.

Most police officers are unaware of what a civil court order looks like. Crown attorneys may also be unfamiliar with all forms that such orders may take. Police officers encountering a civil court order may be suspicious that the order is not signed by a judge, and that photocopies are often presented.

The police are also aware that custody orders are never final. They are never certain that an order presented to them is the most recent. The danger of being subjected to legal action for executing an order that has been subsequently varied is a major concern that has led to police reluctance to enforce civil court orders.

A possible solution to the problem of conflicting court orders is the establishment of a central registry system for civil court orders. A registry system can be useful when an accurate and uncomplicated retrieval of information is required. An example is the placing of arrest warrants on C.P.I.C. (the Canadian Police Information Centre).

One major advantage in setting up a central registry of court orders would be the alleviation of police concern about assisting in enforcement actions. It may be suggested that the possibilities of having court orders that conflict are not significant enough to require the establishment of a registry system. One answer to this is that whether the risk of being presented with an order that has been superseded is real or illusory, nevertheless it is the source of much police uneasiness at the present time. The certainty that a central registry could give to the validity of civil court orders is a not insignificant goal. If the police can rely on the registered order as being the most recent and hence the governing one, fears of subsequent court action for mistakes will disappear, and the effect of the order will not be frustrated as is now often the case.

With regard to parents who abduct their children and remove them from the jurisdiction, there may be merit in having orders registered even when they are made in the absence of the abductor. Although there are problems faced currently with having family court warrants placed on CPIC, placing orders which have gone through a central registry on C.P.I.C. could be helpful in apprehending abductors.

The administrative costs of establishing and operating a central registry of court orders are potentially significant. Co-ordination of data from widely scattered courts would require careful planning. The system would need constant monitoring for consistency and updating of orders. Whether a subsequent order which varies or supersedes the original one would take effect from the time it is made or the time of registration is another concern.

It is not yet clear whether, on balance, the scheme's advantages would outweigh the costs. Further investigation is clearly necessary before such a decision could be made. The Committee advises that the province of Manitoba has a computerized system in place for the enforcement of all family law orders, and recommends an examination of Manitoba's experience with this system. A national central registry is also the subject of interest. The Committee recommends that the central registry system concept merits further study.

CHAPTER 6: ROLE OF THE CRIMINAL JUSTICE SYSTEM IN CASES OF DOMESTIC VIOLENCE

Domestic violence is not a private affair. It is a serious social problem which requires responses from many areas of the community. Research into the motivations which encourage domestic violence is required, as is information on its prevention.

The problem of domestic violence can be approached from social, economic, psychological and legal perspectives. In this chapter, the Committee examines the role of the criminal justice system in domestic violence cases, outlining specific areas in which the system's response to these cases can be improved.

In many places it is police practice to advise victims of domestic assault that they must appear personally before a justice of the peace in order to lay an information. Some police officers believe that they cannot lay an information for common assault if they have not witnessed the assault. This is incorrect. In law, the police can swear to an information if, on reasonable and probable grounds, they believe an assault has occurred. The victim's complaint itself can constitute a sufficient basis for that belief.

The police generally have been reluctant to swear to informations because for various reasons the complainants frequently do not wish to proceed to trial. Accordingly, the police consider their involvement in domestic disputes as frustrating and impractical. As a result, the victim, regardless of the circumstances, is perceived as someone who will insist that the police lay charges and who will later insist that the charges be withdrawn. The Committee

sees a number of ways in which the response of the criminal justice system in cases of domestic violence can be improved.

The police should take a more active role in laying informations in order to give victim spouses full access to the criminal justice system. Generally, complainants do not understand the nature of the judicial system and so may be unable to take advantage of available remedies. Understandably, many are afraid to institute charges. When the information is laid by the victim it is more likely for the aggressor to view the pending charges as a reason to threaten or terrorize the complainant.

In addition, the practice of having the victim lay the information may result in such assaults being characterized as a private matter in which the State has little interest, rather than as behaviour of which society as a whole disapproves. The fact that victims of domestic violence are assaulted by someone to whom they are married or from whom they are estranged does not warrant the assault being considered less seriously than other assaults. Battered spouses should be given the same protection the law would afford to victims in non-domestic situations.

In circumstances where the facts warrant, the offence sworn to should be assault causing bodily harm or aggravated assault, and not merely assault. Subject to the provisions of the Criminal Code, the police should not hesitate, in the appropriate cases, to arrest the accused without a warrant. In addition, where judicial interim release conditions or terms of other court orders are breached, charges should be laid and such violations

should be prosecuted. To do less would be to subject domestic violence cases to a lesser standard than other cases of violence.

While private informations should not be encouraged, they must not be eliminated. In those situations where police choose not to lay an information, complainants should be advised of their legal right to attend before a justice of the peace. If the charge is processed, the Crown attorney should be given sufficient information to prosecute the case effectively and to ensure that the case is dealt with as expeditiously as possible. However, complainants will have to understand that if a charge is laid it will proceed. The power to withdraw is exclusively within the discretion of the Crown attorney and should be exercised only in very exceptional cases.

The Scope for the Use of Interim Release

The basic function which the criminal law serves in the area of family violence is the protection of the victim spouse from further abuse. In some cases, in order to serve this primary purpose, it is necessary to incarcerate the accused.

There is a need for further education of justices of the peace with regard to the legal options available for victims of domestic assaults. Whether the information has been laid privately or by the police, where there is a likelihood of physical harm to the complainant the justice of the peace should be urged to issue a warrant for arrest of the accused.

Once a warrant is executed, the assailant can be held in detention or released on bail with conditions.

In many cases, there may be cause to hold the assailant in custody on the ground that he is likely to repeat the offence. This information, which a Community Relations Officer may have through repeated contacts with the family, often does not seem to come to the attention of the justice of the peace hearing the bail application. If a bail hearing is warranted, the person who appears on behalf of the Crown must have the necessary information to be able to determine whether the accused should be detained in custody.

Where release is thought appropriate, consideration should be given to the terms which ought to be imposed. For instance, it may be advisable to impose a term which precludes the assailant associating with the victim. The Committee recommends that consideration should be given to scheduling bail hearings as close as possible in time to Family Law Reform Act hearings for exclusive possession of the matrimonial home.

Even if the domestic assault victim succeeds in obtaining conditions imposed on the judicial interim release of the assailant, breaches of such conditions are seldom reported or prosecuted. As in the case of peace bonds, complainants should be advised of the need to inform police of violation of the terms of release. Without prosecution of these violations, the deterrent effect of the release conditions is lost.

It is recommended that bail hearings in cases of domestic violence should be dealt with on the same basis as other offences involving violence. Where there is evidence of assault, full consideration should be given to the provisions of the Criminal Code regarding arrest and detention of the accused.

Empowering Police to Impose Conditions of Release

Under sections 452, 453 and 453.1 of the Criminal Code, peace officers and officers in charge are given the power to release persons from custody. If the persons being released are to be charged with criminal offences, their attendance in court can be compelled in various ways:

- Summons (Form 6)
- Appearance Notice (Form 8.1)
- Promise to Appear (Form 8.2)
- Recognizance (Form 8.3)

Where it is clear that a charge will be laid and the accused released in a domestic violence case, it is preferable that the accused be released pursuant to an appearance notice, a promise to appear or a recognizance. This ensures that the accused, before leaving police custody, must sign a document stating that he or she knows that a charge has been laid, and that a court appearance is necessary on a particular date.

Under the present law, neither a peace officer nor an officer in charge as defined in section 448 of the Criminal Code has the power to impose conditions upon an accused person's release, hence any terms attempting to regulate the behaviour of the accused must be imposed by a

court. In many areas of the Province, the alternative to release is detaining a person in custody until a court is in session the next morning (that is, where the arrest is made after normal working hours). There is some sympathy for the accused person who will most likely miss time from his or her work to the probable detriment of the person who is already the victim of the offence.

Certain conditions would ensure the safety of the victim if the peace officer or officer in charge had the power to impose them. It would be simple and equally effective if the accused was released from the police station on the condition that he or she not return to the residence of the aggrieved person, rather than after a bail hearing. There is no such power given by sections 452, 453 and 453.1 of the Criminal Code. These sections and Forms 8.1, 8.2 and 8.3, which are required forms pursuant to section 448 of the Code, would require amendment if the powers proposed were to be given to peace officers and officers in charge.

The Committee recommends that representations should be made to the federal government that the Criminal Code be amended to give police the power to impose conditions when they release an accused person on an appearance notice, a promise to appear and a recognizance.

It may appear to some that this proposal infringes on individual rights and freedoms, while increasing police powers. In the rare cases where an error might occur, we believe that it would be better to err on the side of the victim.

Procedure for Prosecution

Currently, criminal charges which arise as a result of domestic violence are generally processed through the Provincial Court (Family Division) rather than the Provincial Court (Criminal Division). This channelling of domestic-related criminal charges into the Family Court can be actively but inadvertently promoted by the criminal justice system. Complainants are advised by the police to go to the Family Court to charge their spouses. Justices of the peace attached to the Criminal Court often refuse to process the charges thinking that they must be disposed of in Family Court.

Although it is common to speak of criminal charges being heard in Family Court, in reality the trial is being conducted in the Provincial Court (Criminal Division) at the Family Court premises by a magistrate who is usually also a judge of the Provincial Court (Family Division). Accordingly, in this context Family Court and Criminal Court refer to the premises and personnel and not to the court having jurisdiction over the offence.

The Committee's consideration of this issue revealed both a positive and a negative aspect to this channelling of domestic-related criminal charges to the Family Courts. In some cases, it may indeed be preferable to handle the case in Family Court; others are more appropriately dealt with in the Provincial Court (Criminal Division). The Committee, therefore, has recommended the retention of the use of the Family Court for the prosecution of these charges where appropriate, but recommends also that access to the criminal courts be made available for the prosecution of the domestic-related criminal charges where the situation warrants.

The Provincial Court (Family Division), which has been designed to deal specifically with family-related matters, has certain specific features which may, in proper cases, be of benefit to the complainant and family.

These features include the availability of auxiliary support services, including counselling and conciliation services, and the desirability of keeping all proceedings, both civil and criminal, relating to the same family, in one court.

At the same time, the use of the Family Court to deal with criminal charges has certain inherent disadvantages, specifically:

- the separation of domestic-related criminal charges from the regular criminal courts suggests that the criminal justice system treats such matters differently from other criminal offences.

- the generally less formal and more familiar atmosphere of the Family Court exaggerates the distinction made by the separation of domestic-related criminal offences from other crime, and suggests that these offences are treated less seriously by the State.

- most family courts do not have Crown attorneys available on a full-time basis, and the prosecution of the criminal charges often is left to the complainant's lawyer or the complainant.

- many family courts, particularly those located outside major urban centres, do not sit daily. This can cause delays where prompt action is required.

- the availability of counselling and conciliation services may lead to a deflection of these charges out of the criminal justice system and into the social services system. This perpetuates the myth that domestic-related criminal offences are interactional and communication problems within the family rather than criminal offences which are the concern of society at large.

Given the distinct nature of the two courts, criminal and family, and the advantages and disadvantages of each, the Committee is of the opinion that both the Provincial Court, (Criminal Division) and the Provincial Court, (Family Division) should be available to complainants in domestic criminal offences. The choice of forum should be made after considering the following factors:

a) the wishes of the complainant;

b) the history of violent episodes;

c) seriousness of the offence;

d) the complainant's desire to consider reconciliation;

e) the complainant's desire to make use of counselling services;

f) the likelihood of the family benefiting from counselling or other support services;

g) the likelihood of the accused attending counselling;

h) the likelihood that the offence will be repeated; and

i) the risk of further harm to the complainant.

Clearly, in cases of serious violence or in cases where there is an extensive violent history, or in any case where there is concern about the victim's safety, the criminal justice authorities should lay charges in the criminal courts. The discretion to channel other cases to the Provincial Court (Family Division) should only be exercised in cases in which the victim's safety is not at risk, and in which the family members appear willing to attend counselling and able to benefit from it. The needs and wishes of the victim should be a paramount consideration in choosing the forum.

In order to implement the above, justices of the peace in both the Provincial Court (Criminal Division) and the Provincial Court (Family Division) should be directed to take informations from either the police or the complainant in domestic violence situations, and to process them through their respective courts.

The Role of the Crown Attorney

The Crown attorney plays a very important role in domestic violence cases.

The Committee recommends that the role and involvement of Crown attorneys in prosecuting charges of domestic violence or breaches of peace bonds be reviewed.

As a general proposition, if a charge is warranted, it should be prosecuted by the Crown attorney. Crown attorneys may proceed with a prosecution against the wishes of the complainant. The Crown attorney should accede to a request by the complainant not to proceed only after giving the request careful and serious consideration. This is clearly in line with the view that domestic violence is in the realm of other criminal offences and must be treated as equally serious, and not regarded as solely a private family matter.

The Crown attorney should make use of any of the relevant provisions of the Criminal Code including, in particular, those relating to peace bonds.[1] In this regard, it may be necessary to bring to the attention of the victim the need for reporting breaches of these bonds.

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1 This is discussed next in this chapter.

It has often been the case that sentences in crimes of domestic violence have not reflected the seriousness of the matter.[2] By means of strong submissions on sentence in these cases of domestic crime, Crown attorneys can aid in ensuring that the sentence reflects the seriousness with which the community views the offence.

In deciding where the charge should be initiated - whether in Family Court or Criminal Court - the Crown attorney should take into account the views of the complainant as outlined earlier. Factors which may influence the Crown attorney's recommendation on the appropriate forum for the charges include the nature and seriousness of the offence, the background of the offender, availability of a Crown attorney who will have carriage of the prosecution, and the availability of an early trial date.

Because a Crown attorney is not routinely available for criminal proceedings in Family Court, the victim often does not have the benefit of legal advice. It is agreed, however, that if a victim asks for a Crown attorney one should be made available except in very exceptional cases. In some jurisdictions, particularly outside Metropolitan Toronto, this may involve having the case adjourned until a Crown attorney is available.

The Ministry of the Attorney General should ensure that Crown attorneys have the assistance necessary to allow them to consult personally with the victim within a reasonable time after the charges are laid and not solely on the day of the trial. The complainant's evidence and courtroom procedures should be reviewed.

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2 Sentencing is discussed later in this chapter.

The Use of Peace Bonds

Section 745 of the Criminal Code governs the use of sureties to keep the peace. Where a person fears injury from another person, an information may be laid before a justice of the peace, who will order the parties to appear before him. If the justice is satisfied that the evidence discloses reasonable grounds for the informant's fears, he may order the defendant to enter into a recognizance to keep the peace. This recognizance may be with or without sureties, and cannot extend beyond a twelve-month period. The court may order that the defendant comply with such reasonable conditions as are set out in the recognizance for securing the defendant's good conduct.

In the event that the defendant refuses to enter into the recognizance, section 745 empowers the justice to commit the defendant to prison for a maximum of twelve months. Where the defendant enters the recognizance and subsequently breaches its conditions, section 746 provides that he has committed a summary conviction offence.

The Committee recommends that a directive be issued to Crown attorneys reminding them of section 745 of the Criminal Code concerning peace bonds, and asking them to bring to the attention of victims the need to report breaches of the peace. In addition, as part of the legal education of police with regard to domestic violence,[3] the police should be informed of the offence created in section 746 of the Code, and that they may arrest where they find a person committing a breach of a peace bond.

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3 See Chapter 7 for a general discussion of police education and training in domestic violence cases.

Only by monitoring and prosecuting breaches of peace bonds can the criminal justice system make them effective in their purposes of protecting the complainant from harm.

It is worth noting that amendments have been proposed to the Criminal Code which would make it an offence to threaten to injure another person. As the law stands now, threatening injury is an offence only where the threat is made by forms of communication such as letter or telephone. A face-to-face threat is not, at the present time, an offence. The Committee recommends further research into the effectiveness and use of peace bonds as a response to problems of domestic violence.

Current Sentencing Practices

While the Committee was lacking any statistical research which would substantiate concerns it had about the appropriateness of current sentencing practices, there was agreement that, in general, the sentences handed down in spouse-battering cases are too low.

The major goals of sentencing are deterrence, rehabilitation, and a societal expression of public censure. In an effort to further these goals, the following recommendations are made.

Sentences should be severe enough to reflect society's abhorrence of violence, particularly in a family setting. In many respects, violence between family members is more reprehensible than violence between strangers, especially when it is part of an on-going pattern of behaviour, and having regard to its extreme impact upon children growing up in such a household. As a result, there should be no

special leniency from the courts in sentencing such crimes of violence.

Possible penalties for spouse abuse are conditional discharges or probation. Often the court merely stipulates that the offender keep the peace for the specified time limit. It would be more effective if such sentences were more detailed, setting out specific requirements and prohibitions. Typical examples of such conditions are:

- that the offender not assault his spouse or the children;
- that he stay away from where spouse is living;
- that he not attempt to contact her directly or indirectly;
- that he not possess a weapon; and
- that he undergo counselling, for example, with Alcoholics Anonymous.

In this way, the conditions can be tied more explicitly to the offence. The usefulness of such specific conditions should be pointed out to Crown attorneys and to judges.

In an effort to establish effective rehabilitation mechanisms, self-help groups for spouse-abusers have been set up in American cities. Initiatives in this direction are beginning in Canada, and should be supported and encouraged. Where such groups exist, judges should be urged to require abusers to seek counselling from such groups as an additional part of the sentence imposed.

CHAPTER 7: POLICE TRAINING AND PROCEDURES FOR INTERVENTION IN DOMESTIC DISPUTES

Police are generally the first outside people involved in domestic disputes. Their response to the call, their conduct and the information which they give to both the victim and the perpetrator of the assault will significantly influence the long-term situation. Further, intervention in domestic crisis situations is a hazardous police duty, the exercise of which holds high risks of violence for members of the police force. Viewed in this light, it is in the interests of both society and the police officer that officers receive proper training in responding to domestic crisis calls.

The police officer in a domestic crisis situation, as in other criminal investigations, has two functions: first, he or she must protect the victim; second, he or she must enforce the law and take appropriate steps to ensure that, where a possible violation of the Criminal Code has occurred, charges are laid.

In addition, in domestic crisis calls, the police often find themselves involved in the enforcement of civil court orders, particularly restraining orders, orders for exclusive possession of the matrimonial home, and orders referring to custody of and access to children. Police have little experience with the enforcement of civil court orders, and virtually no training concerning the content of such orders and their specific jurisdiction and powers in enforcing them.

Historically, police have been trained to view domestic crisis calls as largely outside of the scope of their responsibility. They were trained to see their job as restoring a temporary state of peace in the household, and advising the parties of their rights. Police would rarely charge a spouse with assault. Arrests, even where possible, rarely occurred. In general, the police view domestic assault as a private matter, and not a violation of the Criminal Code.

The attitude of police officers to domestic crisis calls must be changed through proper training. Police should be trained to view a domestic assault as a violation of the Criminal Code. Moreover, police should be informed of the statistical information available concerning homicides and aggravated assaults. An awareness of the fact that these situations tend to escalate over time and not diffuse would assist them in understanding the serious nature of the crime.

Police training should also include the development of an understanding of the victim's situation, including an awareness of the typical patterns of domestic violence and the impact of this pattern on the women emotionally and psychologically. The police should also be made aware of the economic and cultural factors which influence the women. By sensitizing police to the women victim's situation, they will be able to offer her more support and be more able to understand her decisions, including the decision to remain with her violent husband.

Because of the interface between the civil and criminal law in this area, police training should include sufficient information about civil law to allow an officer to make appropriate decisions concerning the validity and enforceability of civil court orders.

We therefore recommend that all police training concerning domestic crisis calls be reviewed. All training programs should balance training concerning crisis intervention with training concerning the impact of domestic violence and proper steps to be taken by the police. Courses and programs should be developed immediately which will teach police about the criminal nature of these calls and the appropriate responses, including arrests and swearing of informations. Training programs should be developed which will teach police about civil court orders and the Criminal Code sanctions for the breach of same.

CHAPTER 8: PUBLIC INFORMATION FOR THE ASSISTANCE OF VICTIMS OF DOMESTIC VIOLENCE

Battered spouses do not make use of the legal system because they are unaware of their legal rights. When the victim of domestic violence does seek the protection of the law, too often ignorance about the legal system prevents the making of an informed, educated decision about what type of legal resource to utilize.

Where criminal charges have been laid, the victim often seeks to withdraw the charge or refuses to testify.[1] Lawyers, police and court officials who deal with battered spouses become frustrated by this pattern and are reluctant to involve themselves in matters which they feel will be ultimately futile. The high number of withdrawals is contributed to by the victim's ignorance of the legal system, lack of support (emotional, informational and financial) throughout the processing of charges and, in some instances, by intimidation or outright threats from the accused.

Victims of domestic violence need support if they are to extricate themselves from the abuse they suffer and seek the full protection of the law. They need detailed information about the legal process and, when they seek to use the legal system, supportive counselling.

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1 A 1977 study done by Judith Thompson in London, Ontario revealed that of 302 charges laid by women against their violent partners, 161 were either withdrawn or dismissed.

There are a number of facilities operating at the present time which offer such support to women. Such organizations as Interval House, Women in Transition and Nellie's have been in operation for several years. Originally providing little more than a place for battered women to stay for a time, battered women's shelters now offer counselling and an extensive referral network. Organizations such as the Ontario Association of Transition and Interval Houses can assist victims of domestic violence in preparing for legal action and offer supportive counselling throughout this difficult period. Education Wife Assault (formerly Support Services for Assaulted Women) provides public information on the rights of assaulted spouses.

It is recognized the needs of battered spouses fall into different categories and that many of these needs fall within the jurisdiction and are the province of those charged with the responsibility for bringing the offending spouse to justice.

Victim/witness services or programmes with special emphasis on the problems of battered spouses should be provided by the Ministry of the Attorney General through the Crown attorneys' system. It is recognized that such programmes do in fact require special funding and resources but because of the nature of them the funding and resources ought to be made available by the government. As noted special consideration should be given to victims of domestic violence because of the many special problems associated with such criminal acts. Such programmes should have the following objectives:

- to inform the victims of battering about the applicable law and to explain the legal system to them in simple terms

- to encourage the victims to follow through with the case where appropriate

- to assist in educating the public and other professionals who deal with victims of spousal violence i.e. the police, doctors, social services personnel and other government agencies

- to ensure that domestic violence is taken seriously and dealt with strictly and to foster a realization that domestic violence is as criminal and more serious than assault offences that do not involve members of the same family

- to ensure that a professional member of the Crown Attorney's staff is always available to meet with the victim so that she may be kept up to date on the status of the proceedings and if the trial has been postponed to ensure that the victim is aware of it and that the new hearing dates are convenient to her

- to assist in transportation and/or babysitting if required

- to explain in practical terms the disposition of the trial

At the same time it is recognized that there are other needs of the victim of domestic violence that must be attended to and accordingly that there is a place for facilities and organizations to offer support to victims of domestic violence. Some of the organizations have been mentioned above. Such organizations however cannot operate without funding and the required funding should be made available by the appropriate Ministry or government department to facilitate the expansion and establishment of shelters and other support services to cater to the needs of victims of domestic violence. Such organizations should have the following objectives:

- to offer emotional assistance and support to the victims of domestic violence

- to encourage the victims where charges are appropriate to follow through with the charges in question and to co-operate fully with the law enforcement authorities

- to help the victims take positive steps to seek alternate shelter, counselling and employment where such is desirable

- to assist in the education of the public and the professionals who deal with victims of battering about the nature and ramifications of domestic violence

- to assist in providing information about the status of the case before the Court

- to assist in the arrangement of the victim's schedule so that she may attend Court at the appropriate time and to advise and assist with respect to babysitting

- to assist in the arranging of transportation to the Court facility

- to provide support where requested by accompanying the victim to the Court.

Information pamphlets should be published and distributed free of charge through all public libraries and battered women's shelters in Ontario. Such booklets or information pamphlets should in simple terms outline important information for the domestic violence victim pertaining to the criminal justice system, contacts with the police and Crown attorney and some information about Family Law in general. The Ontario Provincial Secretariat for Justice has published a pamphlet of information for sexual assault victims. A similar publication geared to the needs of domestic assault victims should be considered.

CHAPTER 9: OTHER MATTERS

Legal Aid

The Ontario Legal Aid Plan presents difficulties to applicants who are victims of domestic violence or who are involved in custody cases where kidnappings have occurred or are threatened. With respect to the Plan in general, the problems centre on the financial criteria used to determine who is entitled to legal aid.

In particular, many women, often supporting children with minimal or no assistance from their husbands, are refused legal aid because they have savings or other financial resources, or because their earnings exceed the guidelines set out by the Ministry of Community and Social Services.

Where the woman has money in the form of savings or other liquid assets, she is generally refused legal aid by the Plan on the grounds that she is able to retain a lawyer privately. Often these funds are required to pay for housing and the re-establishment of a household for the woman and children. Furthermore, these funds are frequently the only reliable money which the woman will have for herself and the children.

The financial criterion for eligibility is such that a woman who is employed and earns a marginal income is often not eligible for legal aid. She often does not, however, have sufficient funds to retain a lawyer without seriously affecting her ability to maintain herself and the children.

The Committee recommends that the Legal Aid officials when determining whether an applicant is entitled to legal aid be more realistic in considering the necessity of the spouse being left with some funds for the purposes of re-establishment in the community. A small amount of savings doesn't necessarily indicate that the person can afford to retain a lawyer on a private basis.

There are some other problems encountered in dealing with the Ontario Legal Aid Plan because there are unresolved questions as to the scope of the Plan's application to services connected with domestic violence cases.

For instance, the Plan may not cover attendances at court of the lawyer for the victim of domestic violence, attendance before a justice of the peace by the victim and counsel for the purposes of laying a charge, and officials might not issue a certificate for proceedings in Provincial Court (Family Division). The Committee recommends that the administrators of the Legal Aid Plan carefully consider exercising their discretion to grant a certificate in all cases connected with domestic violence, and where certificates are requested for cases in Provincial Court (Family Division).

There are problems encountered in dealing with liens with respect to the matrimonial home. The Committee recommends in such cases the lifting of liens and refunding of moneys be dealt with expeditiously.

In amending its approach, the Legal Aid Plan must take note that generally the woman is left with the financial responsibility of the children, and that women generally have lower incomes than men.

Sponsored Immigrant Wives

Sponsored immigrant wives encounter special difficulties when they make application for general welfare assistance. Both the General Welfare Assistance Act Regulations (ss.3(3)(b)) and the Family Benefits Act Regulations (s.8a) give the welfare administrator a discretion to reduce the amount of assistance granted or to deny a request for assistance when he or she feels that an applicant is not making reasonable efforts to obtain compensation; this includes a person who is a "sponsored dependant" or a "nominated relative" within the meaning of the Immigration Act Regulations.[1]

According to the Immigration Act Regulations, a condition of the granting of an immigrant visa is that an undertaking must be given by a Canadian resident that he or she will provide lodging, care and maintenance to a "member of the family class" for a period not exceeding ten years or "an assisted relative" for a period of five years.[2] Under these provisions, it is possible for the

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1 Under the Immigration Act Regulations as found in the Consolidated Regulations of Canada 1978, Chapter 940, "sponsored dependant" is defined in ss.41(1), and "nominated relative" in ss.43(1). These Regulations were revoked in 1978, and replaced by new Regulations, S.O.R./78-172, found in Canada Gazette Part II, Vol. 112, No. 5.

2 The present Immigration Act Regulations no longer refer to "sponsored dependants" and "nominated relatives"; the present Regulations refer to "members of the family class" in ss.6(1) and "assisted relatives" in ss.10(1). In most cases, a sponsored immigrant wife used to be a "sponsored dependant" and is now a "member of the family class". It is a simple matter for the General Welfare Assistance Act and Family Benefits Act Regulations to be changed to conform with the present wording of the Immigration Act Regulations; however, the change in wording has not yet been effected.

undertaking to continue in existence despite the fact that the immigrant has become a Canadian citizen.

The Committee has learned of cases where sponsored immigrant spouses have made application for general welfare assistance and been denied on the grounds that the other spouse has given an undertaking to provide them with lodging, care and maintenance under the Immigration Act Regulations. They have been advised that they should look to their spouse for support first. This situation is particularly frustrating when the person who has given the undertaking is accused of assaulting the person who requires support, and responds to the welfare administrator by stating that he would be happy to support his spouse if she would return home.

In most cases, the person who gave the undertaking will eventually be required to provide support under the Family Law Reform Act[3] or the Divorce Act[4]. The case of Bilson v. Kokotow et al[5] held that there is no contractual right enforceable by an immigrant based on an undertaking given to the Government of Canada to provide for the accommodation, care and maintenance of that immigrant. The refusal of an application for welfare by a welfare administrator, on the basis of the existence of an undertaking given under the Immigration Act, penalizes a spouse who is a sponsored immigrant, because that spouse

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3 R.S.O. 1980, c. 152. See Part II of the Act for support obligations.

4 R.S.C. 1970, c. D-8. See sections 10-12 on corollary relief.

5 (1975), 8 O.R. (2d) 263 (Ont. H.C.), (1979) 23 O.R. (2d) 720 (C.A.).

has no legal remedy with respect to the undertaking against the person who undertook to provide lodging, care and maintenance. The remedies of the immigrant against a spouse are the same as those of a person born in Canada. On the basis of the case of Bilson v. Kokotow, only the Government has a right against the person who gave the undertaking.

The Committee recommends that welfare departments across Ontario should be advised that applications by sponsored immigrant spouses resulting from marital difficulties are not appropriate cases for the denial of assistance, merely on the basis of the existence of an undertaking given by their spouse pursuant to the Immigration Act Regulations.

Accordingly, consideration should be given to the amendment of ss.3(3)(b) of the General Welfare Assistance Act Regulations, and s.8a of the Family Benefits Act Regulations.

Interval and Transition Houses

Interval and Transition Houses play an integral role in providing shelter and protection to the victims of wife-assault. On a twenty-four hour, seven-day week basis they offer, in addition to food and accommodation, an atmosphere where the victim has the time and freedom to examine the alternatives available to her and her children. The staff and volunteers provide information on where to obtain legal advice, counselling services for the woman, her children and/or her partner, special programs for her children, and many other services. They also offer telephone distress counselling and an information and referral service to other agencies in the community.

At the present time, thirty-six Houses are operated throughout Ontario. However, the bedspace available is still severely inadequate, the total of 473 beds meaning that only one family can be accommodated out of four to five requests for accommodation.

The situation for rural women is worse. They are isolated from the rest of the community, and their calls for help often go unheard. A telephone conversation with the nearest Transition House may appear as a long-distance call on the next telephone bill and can be traced by the irate partner. A toll-free information and counselling service is urgently needed.

Non-English speaking immigrant women and francophone women encounter further difficulty in finding the necessary services in their own language. Therefore, any such toll-free telephone service would have to provide information multilingually, or at a minimum have access to such facilities.

The Transition and Interval Houses are generally funded through Purchase of Hostel Services Agreements under the General Welfare Assistance Act. These agreements are contracted with the municipal Administrator of Social Services, and as the General Welfare Assistance Act is permissive rather than mandatory legislation, dependent on individual interpretation and discretion, the result is widely varying funding arrangements. Furthermore the Act was intended to subsidize the food and accommodation operating costs only, not the other services and programs provided by the Houses. The Houses, therefore, depend heavily on other forms of fund-raising, and operate under the constant threat of closure through lack of funding.

The Provincial Standing Committee on Social Development held public hearings during July 1982, and in its report to the Provincial Legislature recommends that a Bill be introduced which would ensure that the capital and operating costs of Transition and Interval Houses for battered women and their children, including the costs of the support services as offered by the Houses, are adequately funded.

This Liaison Committee recognizes the essential work carried out by the Interval and Transition Houses for the victims of wife-assault and endorses the recommendations of the Standing Committee on Social Development.

This Committee supports the recommendation that a twenty-four hour toll-free multilingual telephone line be established by the Ontario Association of Interval and Transition Houses, and that costs for the operation of this toll-free line be funded by the Government.

The Committee supports the recommendation in addition that the Government introduce a Bill that would ensure that the capital and operating costs of Transition and Interval Houses in Ontario for the victims of wife-assault, including the costs of the support services provided by the Houses, are adequately funded.

Further Research

The problem of wife-battering suffers from a glaring deficiency of research. Until the Canadian Advisory Council on the Status of Women report, "Wife Battering in Canada: The Vicious Circle", in January 1980, there had been no attempt to do any form of national research on

this issue. Further research is required into the following:

1. the incidence of wife-battering and husband-battering in Canada;

2. the forms that the abuse can take, and the length of time involved;

3. the proportion of such cases where the victim seeks legal protection;

4. the proportion of such cases where criminal charges are laid;

5. the proportion of such charges which are laid by the police, and the proportion laid by the victim;

6. the type of charge laid, as compared with the severity of the injury;

7. the length of time such cases take to come to trial;

8. the number of cases withdrawn, and the reasons for these withdrawals;

9. the disposition of those cases which come to trial;

10. the types of sentence imposed for wife battering;

11. the recidivism rate in cases where the offender was sentenced, as opposed to cases which did not come to court;

12. the availability of emergency housing for victims of domestic violence and their children;

13. the availability of counselling, emotional support, and legal information for such victims;

14. the funding requirements for interval houses and other victim advocacy services required by victims of domestic violence;

15. the means by which such funding requirements will be met.

Such research should be pursued by all appropriate levels of government, by academic institutions, and by other research organizations.

The recommendations of the Liaison Committee on the Enforcement of Family Law Orders indicate the need for certain adjustments to be made in order that family law orders may be enforced more effectively. The recommendations suggest also ways in which the response of the criminal justice system to domestic violence cases may improved. Such recommendations are practical guidelines which may assist the administration of justice in those areas with which the Report has been concerned.

Highlighted throughout the recommendations of the Committee as a theme which emerges from the Report as a whole, is the need for information. Police officers, Crown attorneys, lawyers, welfare administrators and the general public all require information about problems relating to domestic violence and the responses which can be made.

Many proposals for further research have been suggested by the Committee. It is essential that these gaps in our awareness of domestic violence be corrected, in order that the comunity at large as well as the justice system may have an understanding of what domestic violence is, what it does to families, and what measures may be taken to deal with it.

SUMMARY OF RECOMMENDATIONS

Chapter 2: Procedures for Enforcement of Family Law Orders

Procedures for Enforcement of Orders for Exclusive Possession of the Matrimonial Home:

Consideration should be given to amending the *Family Law Reform Act* to provide a specific offence section for disobeying an order of the court for exclusive possession, so as to facilitate police enforcement of exclusive possession orders. (p. 7)

Subsection 37(3) of the *Children's Law Reform Act* should be amended to permit orders under subsection 37(1) to persons other than law enforcement officials to be made *ex parte*. (p. 9)

Procedures for Enforcing Custody and Access Orders:

In a proper case judges should order that the child not be taken outside Ontario without the consent of the other spouse. (p. 11)

The federal government should be asked to provide access to records of public agencies for the purposes of obtaining an address as is provided for in the *Family Law Reform Act*, s.26 and the *Children's Law Reform Act*, s.40. (p. 12)

In a proper case, supervised access should be ordered. (p. 14)

In addition, consideration should be given to ensuring that the LAMP project remain viable, and sources of funding remain available for such services. (p. 15)

The Committee recommends further study in the area of supervised access services. (p. 15)

Procedures for Enforcement of Orders Restraining Harassment and Molestation:

An offence and arrest power should be added to the Family Law Reform Act and Children's Law Reform Act for breach of restraining orders. (p. 19)

The Bar should be advised as to the methods of dealing with contempt of a master's orders. (p. 20).

Chapter 3: The Role and Legal Responsibility of the Sheriff's Office and Police Forces in Enforcing Family Law Orders

The confusion surrounding s.122 of the Judicature Act should be clarified. (p. 21)

The Committee recommends that there be easier access to the sheriff's office. Longer hours and weekend availability should be considered. (p. 22)

Police should be advised that they will be called upon to enforce family law orders, and should be aware of their powers under the statutory provisions. (p. 22)

Chapter 4: The Role of the Criminal Justice System and the Police in Cases of Child Abduction

Where there is a custody order and subsequent abduction, Crown attorneys should recommend to the police that charges of abduction of a child under the age of fourteen years be laid whenever the circumstances warrant that course of action. (p. 23)

A warrant in a child abduction case should be executed in the same manner as any other warrant involving a criminal charge. The abductor should be returned from wherever located in Canada. (p. 24)

As a warrant for the arrest of an abducting parent does not give authority to seize the child, counsel for the custodial parent should obtain an order under s.37 of the Children's Law Reform Act so that the police will have power to apprehend and deliver the child in Ontario. Where the children are outside the province, the appropriate extra-provincial order should also be in place. (p. 24)

It is proposed that:

> (a) representations be made to the Passport Office requesting that consideration be given to the steps that may be taken to prevent persons subject to a court order from obtaining new passports; and
>
> (b) appropriate steps be taken to enlist the cooperation of foreign embassies and consulates in refusing to issue new passports to persons subject to a court order. (p. 29)

The Crown attorney should proceed with abduction charges, even where the complainant does not wish to proceed, if that course of action is warranted in the best interest of the administration of justice. (p. 30)

Chapter 5: A Central Registry of Court Orders

The concept of a central registry system for custody orders merits further study. In this regard, the Committee recommends looking at Manitoba's experience with such a system. (p. 33)

Chapter 6: The Role of the Criminal Justice System in Cases of Domestic Violence

Appropriate Procedures for Laying Informations:

The police should take a more active role in laying informations. (p. 35)

Where the facts warrant, a charge of assault causing bodily harm or aggravated assault ought to be laid, and not merely assault. (p. 35)

While private informations should not be encouraged they should not be eliminated. (p. 36)

The Scope for the Use of Interim Release:

Whether an information has been laid privately or by the police, where there is a likelihood of physical harm to the complainant the justice of the peace should be urged to issue a warrant. (p. 36)

Consideration should be given to scheduling bail hearings as close as possible in time to Family Law Reform Act hearings for exclusive possession of the matrimonial home. (p. 37)

Bail hearings in cases of domestic violence should be dealt with on the same basis as other offences causing violence. (p. 38)

Where there is evidence of assault, full consideration should be given to the provisions of the Criminal Code regarding arrest and detention of the accused. (p. 38)

The police should be given the power to impose conditions when they release an accused person on an appearance notice, a promise to appear and a recognizance. (p. 39)

Procedure for Prosecution:

Charges should continue to be brought in both the Provincial Court (Criminal Division) and the Provincial Court (Family Division) but with certain guidelines. (p. 42)

To implement the guidelines proposed, justices of the peace in both the Provincial Court (Criminal Division) and the Provincial Court (Family Division) should be directed to take informations from either the police or the complainant in domestic violence situations, and to process them through their respective courts. (p. 44)

The Role of the Crown Attorney:

The role and involvement of Crown attorneys in prosecuting charges of domestic violence or breaches of peace bonds should be reviewed. (p. 44)

As a general proposition, if a charge is warranted it should be prosecuted by the Crown attorney. (p. 44)

The Crown attorney may proceed with a prosecution against the wishes of the complainant. (p. 44)

The Ministry of the Attorney General should ensure that Crown attorneys have the assistance necessary to allow them to consult personally with the victim within a reasonable time after the charges are laid and not solely on the day of the trial. (p. 45)

The Use of Peace Bonds

A directive should be issued to Crown attorneys reminding them of s.745 of the Criminal Code concerning peace bonds, and asking them to bring to the attention of victims the need to report breaches of the peace. (p. 46)

The police should be informed of the offence created in s.746 of the Criminal Code, and that they may arrest where they find a person committing a breach of a peace bond. (p. 46)

The Committee recommends further research into the effectiveness and use of peace bonds as a response to problems of domestic violence. (p. 47)

Current Sentencing Practices:

Heavier sentences in domestic violence cases should be imposed. (p. 47)

Conditional discharges and probation should be used more effectively. The usefulness of specific conditions should be pointed out to Crown attorneys and to judges. (p. 48)

Judges should be urged to consider self-help groups for abusers as a part of sentencing. (p. 48)

Chapter 7: Police Training and Procedures for Intervention in Domestic Disputes

The Committee recommends that all police training concerning domestic crisis calls be reviewed. (p. 51)

All training programs should balance training concerning crisis intervention with training concerning the impact of domestic violence and proper steps to be taken by the police. (p. 51)

Courses and programs should be developed immediately which will teach police about the criminal nature of domestic crisis calls and the appropriate responses, including arrests and swearing of informations. (p. 51)

Training programs should be developed which will teach police about civil court orders and the Criminal Code sanctions for the breach of same. (p. 51)

Chapter 8: Public Information for the Assistance of Victims of Domestic Violence

Victim/witness services or programmes with special emphasis on the problems of battered spouses should be provided by the Ministry of the Attorney General through the Crown attorneys' system. (p. 53)

The required funding should be made available by the appropriate Ministry or government department to facilitate the expansion and establishment of shelters and other support services to cater to the needs of victims of domestic violence. (p. 54)

Information pamphlets should be published and distributed free of charge through all public libraries and battered women's shelters in Ontario. (p. 55)

Chapter 9: Other Matters

Legal Aid

The Committee recommends that the Legal Aid officials when determining whether an applicant is entitled to legal aid be more realistic in considering the necessity of the spouse being left with some funds for the purposes of re-establishment in the community. (p. 57)

The Committee recommends that the administrators of the Legal Aid Plan carefully consider exercising their discretion to grant a certificate in all cases connected with domestic violence, and where certificates are requested for cases in Provincial Court (Family Division). (p. 57)

With respect to the matrimonial home, the lifting of liens and refunding of moneys should be dealt with expeditiously. (p. 57)

Sponsored Immigrant Wives:

Welfare Departments across Ontario should be advised that applications by sponsored immigrant spouses resulting from marital difficulties are not appropriate cases for the denial of assistance, merely on the basis of the existence of an undertaking given by their spouse pursuant to the Immigration Act Regulations. (p. 60)

Financial Support of Interval Houses:

The Committee recognizes the essential work carried out by the Interval and Transition Houses for the victims of wife-assault and endorses the recommendations of the Standing Committee on Social Development. (p. 62)

The Committee recommends that a twenty-four hour toll-free multilingual telephone line be established by the Ontario Association of Interval and Transition Houses, and that costs for the operation of this toll-free line be funded by the Government. (p. 62)

In addition, the Government should introduce a Bill that would ensure that the capital and operating costs of Transition and Interval Houses in Ontario for the victims of wife-assault, including the costs of the support services provided by the Houses, are adequately funded. (p. 62)

Further Research

> Because of glaring deficiencies of research into problems of domestic violence, research into a number of areas should be pursued by all appropriate levels of government, by academic institutions, and by other research organizations. (p. 65)